**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE K.M.JOSEPH**

**MONDAY, THE 26TH MARCH 2007 / 5TH CHAITHRA 1929**

**WP(C).No. 18227 of 2006(T)**

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**PETITIONER:**
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**G. THANKACHAN, RETIRED HEADMASTER,**
**G.L.P. SCHOOL, MANGALASSERIMALA, RESIDING AT**
**POOKKOTTIL HOUSE, MALAVAYAL, THOVARIMALA P.O.,**
**SULTHAN BATHERY.**

**BY ADV. SRI.K.JAJU BABU,**
**SMT.M.U.VIJAYALAKSHMI.**

**RESPONDENTS:**
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1. **STATE OF KERALA, REPRESENTED BY**
   **SECRETARY TO GOVERNMENT, GENERAL EDUCATIONAL**
   **DEPARTMENT, GOVT.SECRETARIAT, TRIVANDRUM.**

2. **THE DEPUTY DIRECTOR OF EDUCATION,**
   **WAYANAD.**

3. **THE ASSISTANT EDUCATIONAL OFFICER,**
   **MANANTHAVADY.**

4. **THE SUB TREASURY OFFICER,**
   **SULTHAN BATHERY.**

**W.P.(C). NO.18227/2006:**

***ADDL.R5. MANAGER, KERALA STATE FINANCIAL ENTERPRISES,**
**KALPETTA BRANCH, WYNAD.**

***ADDL.R6. MANAGER,**
**CANARA BANK,**
**PADINJARATHARA,**
**WYNAD.**

***ADDL.R5 & R6 ARE SUO MOTU IMPLEADED AS PER ORDER DTD.14/08/2006 IN THIS W.P.(C).**

**BY GOVERNMENT PLEADER SRI. T.T. MUHAMOOD,**
**ADV.SRI.K.S.HARIHARAPUTHRAN,SC,K.S.F.E. LTD.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26/03/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**W.P.(C). NO.18227/2006:**

## APPENDIX

**PETITIONER'S EXHIBITS:**

**EXT.P.1: COPY OF THE JUDGMENT DTD. 04/11/2004 IN O.P. NO. 25884/2000 OF THIS HON'BLE COURT.**

**EXT.P.2: COPY OF THE G.O. (RT). NO. 4418/05/GE DTD. 07/09/05 ISSUED BY THE R.1.**

**EXT.P.3: COPY OF THE ORDER NO. A5/16925/2004 DTD. 01/12/2005 ISSUED BY THE R.2.**

**EXT.P.4: COPY OF THE LETTER NO. A/269/05 DTD. 19/12/05 ISSUED BY THE R.3. TO THE R.4.**

**EXT.P.5: COPY OF THE LETTER NO. A/269/05 DTD. 29/03/06 ISSUED BY THE R.3. TO THE R.4.**

**EXT.P.6: COPY OF THE LETTER NO. A4/PENSION/06 DTD. 18/04/06 ISSUED BY THE R.4. TO THE R.3.**

**EXT.P.7: COPY OF THE LETTER NO. P16/PEN.A/1002/BU/00-01/936 DTD. 21/11/05 ISSUED BY THE ACCOUNTANT GENERAL TO THE PETITIONER.**

**EXT.P.8: COPY OF THE LETTER N. A/269/05 DTD. 05/08/06 ISSUED BY THE R.3. TO THE PETITIONER.**

**RESPONDENT'S EXHIBITS:**

**EXT.R3.A: COPY OF THE LETTER ISSUED BY THE SUB TREASURY OFFICER TO THE PETITIONER.**

**EXT.R3.B: COPIES OF FOUR LETTERS EACH TWO DTD. 30/06/2006 AND 27/07/2006 ISSUED BY THE R.3.**

**EXT.R3.C: COPY OF THE LETTER RECEIVED BY THE R.3. FROM KSFE, KALPETTA.**

**//TRUE COPY//**

**prv.**

**K. M. JOSEPH, J.**

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**W.P.C. NO. 18227 OF 2006 T**

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**Dated this the 26th March, 2007**

**JUDGMENT**

The prayers in the Writ Petition are as follows:

> *"i) Issue a writ of mandamus or other appropriate writ, order or direction, directing respondents 3 and 4 to disburse the amount of Rs.93,813/= as per Ext.P4 towards withheld gratuty with interest at the rate of 12% from 7.10.05 forthwith;*
>
> *ii) Direct the 2nd respondent to disburse Rs.2500/= retained as per Item No.4 in Ext.P2 to the petitioner forthwith;*
>
> *iii) Declare that the petitioner is entitled for realisation of the amount covered by Exts.P4 and P5 towards the withheld gratuity with interest at the rate of 12% from 7.10.05 as declared by this Honourable Court in Ext.P1 Judgment."*

2. Counsel for petitioner presses the first prayer. According to him, the petitioner had approached this Court earlier. Ext.P1 is the Judgment wherein certain directions were issued. Pursuant to Ext.P1, Ext.P2 was passed by the

Government wherein the Government took note of the decision of this Court that the amount of Rs.10,000/= to KSFE and Rs.30,000/= due to the Canara Bank can be recovered from the Gratuity only with the written consent of petitioner. Thereafter, Ext.P4 is passed, as per which the amount payable to the petitioner is fixed as Rs.93,813/=. Learned Government Pleader would submit that the amounts were paid under a mistake to the KSFE and the Canara Bank amounting to Rs.40,000/=, and steps are afoot to recover the amount which was paid in the year 2001. The fact remains that recovery can be effected in law from an employee only if there is written consent for recovery of the same from the DCRG. In the light of Exts.P1 and P2 read with Ext.P4, I find it difficult to accept the case of the Government Pleader that as the amounts are anyway payable by the petitioner to the KSFE and Canara Bank, the recovery effected from the petitioner's DCRG is only justified. I find no justification for the same. Recovery from DCRG for payment to KSFE and Canara Bank is contemplated under law only on written consent

from the employee concerned. There is no case for the Government Pleader that there is written consent from the petitioner for recovery of the amount in question from the DCRG. In such circumstances, there can be no justification for forfeiture of the amount as seen in Ext.P4. Admittedly what remains to be paid under the same is only Rs.40,000/=. The Writ Petition is disposed of directing respondents 3 and 4 to pay to the petitioner a sum of Rs.40,000/= as expeditiously as possible and, at any rate, within a period of six weeks from the date of receipt of a copy of this Judgment. In case the petitioner is not paid the amount within the period fixed, third respondent shall be liable to pay the amount with interest at seven per cent from the date of default.

**K. M. JOSEPH, JUDGE**

kbk.